

ORIGINAL

FILED

11/29/2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: PR 16-0714

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CLERK OF THE SUPREME COURT  
STATE OF MONTANA

PR-16-0714

BEFORE THE COMMISSION ON PRACTICE OF THE  
SUPREME COURT OF THE STATE OF MONTANA

\*\*\*\*\*

12 IN THE MATTER OF LINDA DEOLA,  
13 An Attorney at Law,  
14 Respondent.

} Supreme Court Case No. \_\_\_\_\_

} ODC File No. 16-073

} **COMPLAINT**

16  
17 The Office of Disciplinary Counsel for the State of Montana ("ODC")  
18 hereby charges Linda Deola with professional misconduct as follows:  
19

20 **General Allegations**

21 1. Linda Deola, hereinafter referred to as Respondent, was admitted  
22 to the practice of law in the State of Montana in 1991, at which time she took the  
23 oath required for admission, wherein she agreed to abide by the Rules of  
24 Professional Conduct, the Disciplinary Rules adopted by the Montana Supreme  
25

Court, and the highest standards of honesty, justice and morality, including, but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated.

2. The Montana Supreme Court has approved and adopted the Montana Rules of Professional Conduct (“MRPC”), governing the ethical conduct of attorneys licensed to practice in the State of Montana, which Rules were in effect at all times mentioned in this Complaint.

### Count One

3. ODC realleges and incorporates paragraphs 1 through 2 of the General Allegations as if fully restated in this Count One.

4. Billie Redding (“Redding”) is an elderly Montanan who sold her family ranch in 2004 and was advised by her accountants at Anderson ZurMuehlen & Co., P.C. (“AZ”), to invest the proceeds in a company that went bankrupt in 2008.

5. Richard “Mike” Layne (“Layne”) entered into a contingency fee agreement with Redding to pursue her claims against AZ. Redding’s claims arose from AZ’s alleged misconduct in advising her to obtain tenancy-in-common (“TIC”) shares of properties owned by DBSI, Inc. (“DBSI”). Redding incurred significant financial damages when DBSI became insolvent. AZ similarly advised at least six other clients.

1           6.     Layne is an Oregon attorney. Layne entered into an agreement  
2 with Respondent to have Respondent assist him in pursuing Redding's claims in  
3 Montana and to share attorney fees.

4           7.     On July 27, 2009, Respondent filed a lawsuit on Redding's behalf  
5 against AZ and others in Montana First Judicial District Court, Lewis and Clark  
6 County, Cause No. ADV 09-649.

7           8.     Layne submitted a *pro hac vice* application and appeared *pro hac*  
8 *vice*, although he was not formally admitted by the Court.

9           9.     After the lawsuit was filed, Respondent acquired five other clients  
10 who also had claims against AZ. Respondent was the sole attorney for each of her  
11 other five clients. Since Respondent and Layne agreed to share any contingent fee  
12 in Redding's case, Respondent's prospective contingent fee, based on percentage,  
13 in her newer five clients' cases was higher.

14           10.    Respondent filed lawsuits against AZ on behalf of her five newer  
15 clients alleging damages relating to their TIC investments.

16           11.    New York Marine and General Insurance Company ("NYM") is an  
17 insurance carrier that issued professional liability insurance policies to AZ. There  
18 were two applicable claims-made policies, each with policy limits of \$2,000,000.

19           12.    The aggregate amount of the claims of Respondent's clients  
20 exceeded the available insurance proceeds.

1           13. Six claims were asserted against AZ by seven claimants alleging  
2 damages relating to their TIC investments. All but one of the seven claimants were  
3 represented by Respondent. The other claimant was represented by attorney John  
4 Bloomquist.

5           14. In June 2012, the seven claimants reached a global settlement with  
6 AZ. Pursuant to the settlement agreement, NYM contributed \$2 million from each  
7 of two insurance policy periods (2008 and 2010), and AZ agreed to pay an  
8 additional \$650,000 over a number of years, for a total settlement of \$4.65 million.  
9

10           15. The aggregate amount of the claims of Respondent's clients  
11 exceeded \$4.65 million.  
12

13           16. The settlement funds were distributed to the various claimants  
14 based on each claimant's *pro rata* share of the total amount invested. Redding's  
15 share was \$681,696.96 before paying attorney fees and costs of \$227,209.59 and  
16 \$3,642.30, respectively.  
17

18           17. In violation of Rule 1.7, MRPC, there was a significant risk that  
19 Respondent's simultaneous representation of her six clients would be materially  
20 limited by Respondent's responsibilities to each client and by Respondent's  
21 personal interests.  
22

23           18. On information and belief, Redding did not give informed consent  
24 to Respondent's representation of other clients.  
25

19. Respondent did not secure a signed document from each of her clients expressing consent to the conflict of interest. In any event, Respondent's conflict of interest was not waivable.

20. In violation of Rule 1.8(g), Respondent participated in making an aggregate settlement of the claims of multiple clients without each client giving informed consent in a writing signed by the client.

## Count Two

21. ODC realleges and incorporates paragraphs 1 through 2 of the General Allegations and paragraphs 4 through 16 of Count One as if fully restated in this Count Two.

22. On information and belief, Respondent failed to timely and adequately inform Redding of Respondent's multiple representations, the conflict of interest, and the ramifications of the global settlement and allocation of the proceeds.

23. Respondent's conduct, as described in this Count Two, constitutes a violation of Rule 1.4, MRPC.

**Count Three**

24. ODC realleges and incorporates paragraphs 1 through 2 of the General Allegations and paragraphs 4 through 16 of Count One as if fully restated in this Count Three.

1           25. In September 2012, Redding sued NYM in connection with its  
2 handling of her claim. The case was filed by Respondent on Redding's behalf.  
3 The case was initially filed in state court and was removed to federal court in  
4 October 2012. The case is captioned *Redding v. Prosight*, Cause No. CV-12-H-  
5 CCL.  
6

7           26. On March 12, 2013, NYM served *New York Marine and General*  
8 *Insurance Company's First Set of Requests for Production of Documents to Billie*  
9 *Redding*.  
10

11           27. Request for Production No. 2 states: "PRODUCE all  
12 DOCUMENTS and COMMUNICATIONS RELATING TO ANDERSON  
13 ZURMUEHLEN."  
14

15           28. Request for Production No. 5 states: "PRODUCE all  
16 DOCUMENTS and COMMUNICATIONS RELATING TO any of the  
17 UNDERLYING ACTIONS, including, without limitation, any DOCUMENTS and  
18 COMMUNICATIONS RELATING TO settlement and/or mediation of any of the  
19 UNDERLYING ACTIONS."  
20

21           29. Respondent submitted responses to NYM's requests for  
22 production.  
23

24           30. On February 3, 2014, the Court disqualified Respondent from  
25 acting as an attorney in the case.

1           31. A document identified during discovery as MMS 488 is a July 14,  
2 2012, email from Curt Drake to Respondent. This document was in Respondent's  
3 possession but was not produced in response to NYM's discovery requests until  
4 after Respondent was disqualified.

5  
6           32. A document identified during discovery as MMS 492 is a July 19,  
7 2012, email from Curt Drake to Respondent. This document was in Respondent's  
8 possession but was not produced in response to NYM's discovery requests until  
9 after Respondent was disqualified.

10  
11           33. Respondent possessed a settlement allocations spreadsheet  
12 showing what each claimant received from the settlement. This document was in  
13 Respondent's possession but was not produced in response to NYM's discovery  
14 requests until after Respondent was disqualified.

15  
16           34. Respondent's conduct, as described in this Count Three,  
17 constitutes multiple violations of Rule 3.4(d), MRPC.

18                           **Count Four**

19  
20           35. ODC realleges and incorporates paragraphs 1 through 2 of the  
21 General Allegations and paragraphs 4 through 16 of Count One, paragraph 22 of  
22 Count Two, and paragraphs 25 through 33 of Count Three as if fully restated in  
23 this Count Four.

24  
25 //

36. In violation of Rule 1.1, MRPC, Respondent failed to provide Redding with competent representation.

37. In violation of Rule 1.3, MRPC, Respondent failed to act with reasonable diligence and promptness in representing Redding.

WHEREFORE, the Office of Disciplinary Counsel prays:

1. That a Citation be issued to the Respondent, to which shall be attached a copy of the complaint, requiring Respondent, within twenty (20) days after service thereof, to file a written answer to the complaint;

2. That a formal hearing be had on the allegations of this complaint before an Adjudicatory Panel of the Commission;

3. That the Adjudicatory Panel of the Commission make a report of its findings and recommendations after a formal hearing to the Montana Supreme Court, and, in the event the Adjudicatory Panel finds the facts warrant disciplinary action and recommends discipline, that the Commission also recommend the nature and extent of appropriate disciplinary action, and,

4. For such other and further relief as deemed necessary and proper.

DATED this 29<sup>th</sup> day of November, 2016.

OFFICE OF DISCIPLINARY COUNSEL

By: Shaun R. Thompson  
Shaun R. Thompson  
Chief Disciplinary Counsel